REMARKS

Claims 1-3, 5-9, 16, 17 and 19-39 are pending in the subject application; claims 1-3, 5-9, 16, 17 and 19-33 have been examined: claims 1-3 and 5-9 are allowed; claims 16, 17, 19-22 and 24-35 stand rejected; and claim 23 is indicated as containing allowable subject matter. By the above amendments, claims 16, 19, 24, 25, 27, 28, and 30 have been amended, and new claims 36-39 have been added. Favorable reconsideration of the application and allowance of all of the pending claims are respectfully requested in view of the above amendments and the following remarks.

Applicant thanks the Examiner for indicating the allowance of claim 1-3 and 5-9 and the allowability of the subject matter of claim 23.

Claims 16 and 17 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,732,218 to Bland. Applicant respectfully traverses this rejection insofar as it applies to claim 16 as currently amended.

Claim 16 sets forth a method of monitoring the end-user experience of attempting to connect a client system (e.g., a user's computer) to a distributed network. The method includes monitoring a connection code to obtain user experience data about the connection process, wherein the connection code indicates whether the client system has successfully established a connection to the distributed network, and wherein the user experience data includes data relating to the user's experience, prior to establishing a connection to the distributed network, of attempting to connect to the distributed network.

Claim 16 essentially relates to the monitoring and reporting of data that describes the user's experience in attempting to establish a connection to the network. For example, as explained in Applicant's specification, in a dial-up context, this user experience data may include such information as: the dial success rate (e.g., information relating to how many redial attempts where made prior to a successful connection, indicating that busy signals where encountered on certain lines), access attempt rate (i.e., the rate at which the network was successfully accessed, irrespective of the extent of redialing necessary), POP phone number involved, error codes that were generated, etc. Inherently, this user experience data relates to events that occur prior to the client device

establishing a connection to the network. This data is useful, because an Internet service provider or the like cannot otherwise know if a user or group of users is experiencing difficulties such as incessant busy signals.

In contrast, Bland relates to the measurement of network service that occurs <u>after</u> the connection to the network has been established. In particular, Bland describes at column 4 the various function performed by a browser extension resident on each client. These function include: measuring delays between a client placing a request and a server's response; the amount of time that an object (e.g., a web page) is active; and information relating to how long the user remains on a page (e.g., timing of events such as clicking ahead to a new page before the current page is fully downloaded or hitting the stop button before the current page is fully downloaded). These functions and the associated data collected plainly relate to the user's experience <u>during</u> a network session rather than the user's experience in attempting to establish a connection to the network. More particularly, Bland does not disclose monitoring a connection code to obtain user experience data about the connection process, wherein the connection code indicates whether the client system has successfully established a connection to the distributed network, and wherein the user experience data <u>includes data relating to the user's experience, prior to establishing a connection to the distributed network, of attempting to connect to the distributed network</u>. There is simply nothing in Bland's disclosure relating to user's experience in attempting to establish a connection to a network. Accordingly, Bland does not anticipate claim 16 or dependent claim 17, and the Examiner is respectfully requested to reconsider and withdraw this rejection.

Claims 24, 19-22, and 25-33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,205,413 to Bisdikian in view of U.S. Patent No. 6,112,243 to Downs. Applicant respectfully traverses this rejection for the following reasons.

Claim 24 sets forth a method of monitoring network-based services over a distributed network accessible by user devices capable of collecting data about end-user experience and communicating network performance data to an experience test server. The claimed method requires: configuring the user devices to notify the experience test server of an availability to

perform network performance tests in response to being connected to the distributed network; distributing instructions from the experience test server to the user devices that are available to perform network tests, in accordance with notifications from the user devices, wherein at least some of the instructions direct the user devices to perform network performance tests; and collecting, at the experience test server, network performance data generated by the user devices that perform the network performance tests.   System claim 27 sets forth analogous elements.

Applicant has previously argued that an important difference between Bisdikian and the claims 24 and 27 is that these claims require the user devices to notify the experience test server of an availability to perform network performance tests prior to the experience test server distributing instructions to the user devices, and that Bisdikian fails to disclose or suggest this feature. The Examiner acknowledges this difference, but essentially argues that Downs teaches distributing tasks to end-user devices, where the end-user devices notify the server distributing the tasks of an availability to perform such tasks, and that it would have been obvious to modify Bisdikian to include this capability.

Applicant respectfully disagrees that it would have been obvious in view of Downs to modify Bisdikian to configure user devices to notify the web server of an availability to perform network performance tests. Downs discloses a scheme by which a party (resource requestor) that requires computer resources to perform computation intensive tasks can be paired with parties (resource providers) that have excess available computer resources to perform the tasks. The resource requestor pays the resource providers for the executing the computational tasks, such as video or image compression. A resource allocator is responsible for managing distribution of the computation tasks and performing administrative functions such as billing, etc.

Bisdikian is a network performance monitoring systems, and network performance tests are distributed to virtual subscribers for the purpose of testing end-to-end operation of various portions of a network. Downs has nothing to do with network monitoring, measuring network performance, or conducting any sort of network testing whatsoever. Downs essentially proposes a scheme for brokering computer resources, where parties in need of computer processing can buy computer

processing capability from parties that wish to sell excess computer processing resources. There is no mention in Downs of performing any tests, much less networking performance or monitoring tests. Applicant respectfully submits that Downs' teaching of brokering the sale of computer resources suggests nothing about how one might have modified Bisdikian's network monitoring system. Accordingly, it would not have been (and could not have been) obvious to modify Bisdikian to include the notification requirement of claims 24 and 27; thus, Applicant respectfully requests the Examiner to reconsider and withdraw this rejection.

Applicant has added new claims 36-39 to more fully claim certain aspects of the invention. In particular, claims 36 (36/24) and 38 (38/27) require that, upon receiving an availability notification from a user device, the experience test server sends an instruction to the user device irrespective of whether the experience test server instructs the user device to perform a network performance test, and wherein instructions that lack test requests direct the user device to contact the experience test server in response to occurrence of a trigger event (see Fig.7). Applicant respectfully submits that neither Bisdikian nor Downs suggests this feature. In particular, note that Downs does not send any instructions that merely instruct the resource providers to contact the resource allocator at a later time or upon occurrence of a later event.

Claims 37 (37/24) and 39 (39/27) require that the user devices maintain information relating to their own testing state, and the experience test server does not maintain testing state information for individual user devices. Applicant respectfully submits that neither Bisdikian nor Downs suggests this feature. In particular, note that Downs requires the resource allocator to maintain a resource table relating to the state of each resource provider and its associated tasks. As explained on page 22 of Applicant's specification, the feature of having the individual clients maintain their own testing state permits greater flexibility and permits the experience test server operation to be scaled to a large number of client devices.

In view of the foregoing, Applicant respectfully requests the Examiner to find the application to be in condition for allowance with claims 1-3, 5-9, 16, 17, 19-39. However, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is

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Amendment
U.S. Patent Application Serial No. 09/256,647

respectfully requested to call the undersigned attorney to discuss any unresolved issues and to expedite the disposition of the application.

Filed concurrently herewith is a Petition for an Extension of Time with payment of the small entity fee for a one-month extension of time, together with an excess claim fee for four claims in excess of the twenty-seven previously paid for. Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee for such extension is to be charged to Deposit Account No. 05-0460.

Respectfully submitted,

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